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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 164

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, voluntary unincorporated associations,
Petitioners,
vs.
LOUIS E. DAVIS, TRUSTEE OF MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation; WOODLIN METAL PRODUCTS COMPANY, a division of MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation; and the SECURITIES AND EXCHANGE COMMISSION,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, voluntary unincorporated associations,
Petitioners,
vs.
LOUIS F. DAVIS, TRUSTEE OF MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation;
WOODLIN METAL PRODUCTS COMPANY, a division of MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation; and the
SECURITIES AND EXCHANGE COMMISSION,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO and its Local 1272, voluntary unincorporated associations, pray that a writ of certiorari issue to review judgments of the United States Court of Appeals for the Sixth Circuit entered on February 27, 1963, in cases en-

titled: *In the Matter of: Muskegon Motor Specialties Company, Debtor, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, and Its Local 1272, Voluntary Unincorporated Associations, Respondents-Appellants; v. Louis F. Davis, Trustee of Muskegon Motor Specialties Company, a Delaware Corporation, Petitioner-Appellee;* and *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO and Its Local 1272, Voluntary Unincorporated Associations, Plaintiffs-Appellants, v. Woodlin Metal Products Company, a Division of Muskegon Motor Specialties Company, A Delaware Corporation, and Louis F. Davis, Trustee in Bankruptcy, Defendants-Appellees.*

CITATIONS TO OPINIONS BELOW

The opinion of the District Court (A 12a-16a)[1] is unreported and is printed in Appendix A hereto, *infra*, pp. 18-22. The opinion of the Court of Appeals, printed in Appendix A hereto, *infra*, pp. 13-17, is reported in 318 F. 2d 841.

JURISDICTION

The judgments of the Court of Appeals were entered on February 27, 1963. Appendix A, *infra*, p. 17. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

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[1] "A" refers to the appendix to the Union's brief filed in the Court of Appeals.

QUESTION PRESENTED

May an existing right to enforcement of an arbitration clause in a collective bargaining agreement be extinguished in the discretion of a district court, where the corporate employer is in reorganization under Chapter X of the Bankruptcy Act and where the agreement had expired and the plant to which it was applicable had closed prior to the Chapter X proceeding?

STATUTES INVOLVED

The statutes involved are Section 301(a) of the Labor Management Relations Act, 61 Stat. 156 (1947), 29 U.S.C. Sec. 185(a); Section 203(d) of the Labor Management Relations Act, 61 Stat. 154 (1947), 29 U.S.C. Sec. 173(d); Section 111 of the Bankruptcy Act, 52 Stat. 884 (1938), 11 U.S.C. Sec. 511; and Section 116 of the Bankruptcy Act, 52 Stat. 885 (1938), 11 U.S.C. Sec. 516. Their text is set forth in Appendix B, *infra*, pp. 23-24.

STATEMENT

On February 27, 1961, the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO and its Local 1272, voluntary unincorporated associations, hereinafter called the "Union," commenced an action in the United States District Court for the Eastern District of Michigan against Woodlin Metal Products Company, a division of Muskegon Motor Special-

ties Company, hereinafter called the "Company" under Section 301(a) of the Labor Management Relations Act, 1947,[2] and the United States Arbitration Act (A 2a).[3] This suit was brought to enforce the arbitration provision of a collective bargaining agreement between the parties dated June 22, 1959 and continuing in effect until April 11, 1961 (A 3a, 4a). This provision specified that any differences "as to the meaning and application" of the agreement be submitted to arbitration and that the decision of the arbitrator should be "final and binding upon the parties" (A 12a). This suit is hereinafter referred to as the suit to compel arbitration.

Arbitration was sought by the Union because of a controversy with the Company regarding vacation pay under the collective bargaining agreement. The Union was the collective bargaining representative of the employees of the Company at all times herein material. Upon the closing of the plant in February, 1960, the Union asserted that the employees were entitled to vacation pay under an Article of the agreement providing, in part, for a vacation allowance due to employees "on the seniority list as of May 31st" and "based on a percentage of his or her straight time earnings." The Company's refusal to arbitrate led to suit (A 2a-7a).

On April 12, 1961, the Company filed a petition under Chapter XI of the Bankruptcy Act.[4] Based on a later petition of the Company, a Chapter X reorganization proceeding was authorized.[5] Louis F. Davis, hereinafter re-

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[2] 61 Stat. 156 (1947), 29 U.S.C. Sec. 185(a).

[3] 61 Stat. 669 (1947), U.S.C. Sec. 1, *et seq.*

[4] 52 Stat. 905 (1938), 11 U.S.C. Sec. 701, *et seq.*

[5] 52 Stat. 883 (1938), 11 U.S.C. Sec. 501, *et seq.*

ferred to as "Trustee" was appointed Trustee for the Company. (A 19a). This proceeding is hereinafter referred to as the reorganization proceeding.

The Trustee was made a party to the suit to compel arbitration, and filed an answer therein (A 10a, 11a). The Union noticed for hearing its application for a mandatory order directing arbitration as prayed in its Complaint (A 2a). The Trustee in the reorganization proceeding filed a petition to reject the arbitration provisions of the collective bargaining agreement pursuant to Section 116(1) of the Bankruptcy Act[1] (A 20a). An answer to this petition was filed by the Union (A 23a).

Both matters were heard simultaneously and one opinion was rendered for both cases (A 12a-16a). On February 8, 1962, in the reorganization proceeding, an order was entered authorizing and directing the Trustee "to reject the executory positions of the said Labor Contract" (A 24a). On the same day, an order was entered in the suit to compel arbitration denying the Union's Motion for a Mandatory Order and dismissing the complaint (A 14a).

The two cases were consolidated for purposes of appeal (A 27a). The Court of Appeals in one opinion affirmed both judgments of the District Court (Appendix A, *infra*, pp. 13-17). The Court concluded:

> "We find no abuse of discretion on the part of the District Court in refusing to surrender jurisdiction in favor of arbitration. The *res* was in *custodia legis*. There was no occasion here for the court to abdicate its judicial functions."

[1] 52 Stat. 885 (1938), 11 U.S.C. Sec. 516(1).

REASONS FOR GRANTING THE WRIT

1. An important question has been raised regarding the relationship between the administration of bankruptcy estates and the enforcement of the federal substantive law of collective bargaining agreements under Section 301(a) of the Labor Management Relations Act. These cases present an apparent conflict of Congressional policies as stated in the two statutes involved.

Section 111 of the Bankruptcy Act, applicable to reorganization proceedings under Chapter X provides:

> "Where not inconsistent with the provisions of this Chapter, the court in which a petition is filed shall, for the purpose of this Chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

The primary purpose of a Chapter X proceeding is to rehabilitate the corporate debtor. It has been stated that exclusive jurisdiction has been granted the bankruptcy court so that all claims may be adjudged in a single action and the corporation rehabilitated as quickly as possible. *In Re Cuyahoga Finance Co.*, 136 F. 2d 18, 21 (6th Cir. 1933); also, *In Re Munts TV, Inc.*, 229 F. 2d 314 (7th Cir. 1956).

Section 203(d) of the Labor Management Relations Act, which has been incorporated into the federal substantive law of collective bargaining agreements (*Textile Workers v. Lincoln Mills*, 353 U.S. 448, 1957), states:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes aris-

ing over the application or interpretation of an existing collective bargaining agreement."

The enforcement of arbitration clauses in collective bargaining agreements is designed to promote industrial peace. *Textile Workers v. Lincoln Mills, supra.* Moreover, an arbitration clause reflects the intention of the parties that "the industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it." *Steel Workers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 581, 582 (1960).[1]

Were it not for the pendency of the reorganization proceeding, it appears that petitioners would have been entitled to arbitration as a matter of course despite the closing of the plant and the expiration of the agreement. *Textile Workers v. Lincoln Mills, supra;* and *Steel Workers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

In this case, the Court of Appeals has held that where industrial peace is not an immediate issue the exclusive jurisdiction of the reorganization court should prevail over the right to arbitrate claims arising under collective bargaining agreements.

This decision creates an important exception to the broad rules regarding the enforceability of arbitration clauses announced by this Court in *Textile Workers v. Lincoln Mills, supra; Steel Workers v. Warrior and Gulf Navigation Co., supra; Steel Workers v. American Manufacturing Co.*, 363 U.S. 564 (1960); and *Steel Workers v. Enterprise Wheel & Car Corp., supra.* Its reasoning is applicable not

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[1] A similar Congressional policy favoring arbitration is found in the United States Arbitration Act, 61 Stat. 669 (1947), 9 U.S.C. Sec. 1, *et seq.*

only to reorganization proceedings but to other types of bankruptcies.

Because of the great number of proceedings under the Bankruptcy Act in which there are claims arising prior to such proceedings under a collective bargaining agreement containing an arbitration clause, a decision of this question will have widespread consequences. The decision of this question will undoubtedly influence both employers and unions in negotiating and performing contractual grievance and arbitration provisions.

2. The decision of the Court of Appeals appears to be erroneously based upon the traditional reluctance of courts to relinquish jurisdiction and the proposition that the Bankruptcy Act is paramount to the federal law of collective bargaining agreements.

The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes is clear. This policy is part of the substantive federal law of collective bargaining agreements under Section 301(a) of the Labor Management Relations Act. *Textile Workers v. Lincoln Mills, supra.* It is submitted that this body of federal law, judicially created pursuant to Congressional direction, should have stature equal to that of the legislation under which it was created. The federal law of collective bargaining agreements should be considered a part of the Labor Management Relations Act as though set forth specifically in the Act.

If the federal law being fashioned under Section 301(a) of the Labor Management Relations Act is part of said Act, there is no reason why the provisions of the Bankruptcy Act should control unless the laws are absolutely irreconcilable. The Bankruptcy Act and the Labor Management Relations Act are both Acts of Congress, founded upon Con-

stitutional authority. It is axiomatic that courts should make every effort to attempt to reconcile and harmonize two possibly conflicting statutes to give effect to the language and intent of each. *United States v. Borden Co.*, 308 U.S. 188 (1939).

This judicial approach appears in *Textile Workers v. Lincoln Mills, supra.* There, specific performance of an arbitration clause under Section 301(a) of the Labor Management Relations Act was permitted despite the literal language of the Norris-LaGuardia Act which would restrict Section 301(a) to damage actions. The Court considered the abuses which Norris-LaGuardia was designed to correct. Since failure to arbitrate was not a part of such abuses and the Congressional policy favoring arbitration was clear, there was no reason to subject Section 301(a) to Norris-LaGuardia requirements.

In *Nathanson v. N.L.R.B.*, 344 U.S. 25 (1952), it was held proper for the National Labor Relations Board, rather than the bankruptcy court, to determine the amount of a back pay award, an unfair labor practice having been found prior to bankruptcy. Although the bankruptcy court normally supervises the liquidation of claims, the court said:

> "It is the Board, not the referee in bankruptcy, nor the court, that has been entrusted by Congress with authority to determine what measures will remedy the unfair labor practices." (p. 30)

The status of the Board as a creditor and the provability and priority of the back pay award as a claim were determined by reference to the Bankruptcy Act. The decision gave effect to the language and intent of both the National Labor Relations Act and the Bankruptcy Act.

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[1] 47 Stat. 70 (1932), 29 U.S.C. Sec. 101 *et seq.*

In the present case, both lower courts indicated that whether arbitration should be allowed was within the *discretion* of the bankruptcy court, thereby relegating the federal law of collective bargaining agreements to a secondary position. Neither court attempted to reconcile the two laws involved, to give effect to the intent of both.

However, the Congressional policies favoring arbitration and granting exclusive jurisdiction to the bankruptcy court are not necessarily conflicting and can be reconciled. In the instant case, claims could be filed in the reorganization proceeding based on the determination of the arbitrator. The bankruptcy court would retain its ultimate jurisdiction to determine the priority of such claims, the amount thereof to be paid and the manner of payment.

To require the individual employees to present their claims for determination by the bankruptcy court will injure both the employees and the union with no offsetting benefit to the reorganization proceeding. The employees will be deprived of their right to have their claims determined by application of the industrial common law. The Union will be injured substantially in its representative capacity.

The District Court suggested that arbitration in this case might not be particularly burdensome to the estate, but refused to order it because the Trustee did "not desire to submit the issue to arbitration" and there was "a ready forum in which claims may be submitted" (A 15a).

The Court of Appeals affirmed saying that:

> "The cases where the bankruptcy court surrendered jurisdiction do not support the Union's position. In those cases, jurisdiction was surrendered either to another court of competent jurisdiction or

to an administrative agency which was empowered by law to hear and determine the particular controversy." (Appendix, *infra*, p. 16.)

It appears that both the District Court and the Court of Appeals have departed from the usual rules of statutory construction. The result is that the developing body of substantive federal law regarding collective bargaining agreements becomes a subordinate type of law.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: May 23, 1963.

APPENDIX A

OPINION OF THE COURT OF APPEALS

Nos. 14,982-3

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

In the Matter of:

MUSKEGON MOTOR SPECIALTIES COMPANY,

Debtor.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, Voluntary Unincorporated Associations,

Respondents-Appellants,

v.

LOUIS F. DAVIS, TRUSTEE OF MUSKEGON MOTOR SPECIALTIES COMPANY, A Delaware Corporation,

Petitioner-Appellee.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, Voluntary Unincorporated Associations,

Plaintiffs-Appellants,

v.

WOODLIN METAL PRODUCTS COMPANY, A DIVISION OF MUSKEGON MOTOR SPECIALTIES COMPANY, A Delaware Corporation, and

LOUIS F. DAVIS, Trustee in Bankruptcy,

Defendants-Appellees.

APPEAL from the District Court of the United States for the Eastern District of Michigan, Southern Division.

Decided February 27, 1963.

Before: CECIL, Chief Judge, WERICK and O'SULLIVAN, Circuit Judges.

WERICK, Circuit Judge. This is one of an increasing number of cases coming before the courts involving the application and legal effect of an arbitration clause in a collective bargaining agreement. In the present case, the Union claims that the District Court should have surrendered, in favor of arbitration, its exclusive jurisdiction to determine claims of employees for vacation pay against the estate of a defunct debtor in reorganization proceedings.

The collective bargaining agreement entered into between the Union and a division of the debtor contained a provision for vacation pay for employees having one year or more seniority and on the seniority list *as of May 31st.*

On February 12, 1960 the division went out of business and discharged all its employees. Thereafter it disposed of its plant and equipment.

The Union claimed vacation pay for the employees covering the employment period of June 1, 1959 to May 31, 1960. It asserted that even though the division had closed its plant and had no employees as of May 31, 1960, the employer should nevertheless pay for the vacations to which they would have been entitled if it had remained in business. Upon refusal of the employer to accede to this claim, the Union made a demand for arbitration of the grievance. On February 27, 1961 the Union filed suit in the District Court to compel arbitration.

On April 12, 1961 the debtor filed in the District Court a petition under Chapter XI of the Bankruptcy Act, 11 U. S. C. § 701 et seq., which petition was subsequently amended to comply with Chapter X, 11 U. S. C. § 501. The District Court entered an order approving the petition and enjoining and staying all suits against the debtor which would interfere with the exclusive jurisdiction of the court. A trustee for the debtor was appointed by the court and he was added as a party defendant in the suit to compel arbitration. The trustee also filed a petition for an order rejecting the executory provisions of the collective bargaining agreement.

The District Court disposed of both matters in an opinion in which he refused to surrender jurisdiction to arbitration.

In this Court the Securities and Exchange Commission has filed a brief supporting the position of the appellees.

It appears that the arbitration demand was probably motivated by the Union's belief that it would fare better with this procedure than in the bankruptcy court.

The Supreme Court of the State of Michigan, where the agreement was made and to be performed, held in similar cases that the employee had no claim for vacation pay against an employer who had gone out of business prior to the date when the employees' rights thereto had become fixed. *Treloar v. Sleggeman*, 333 Mich. 166; *Givhan v. Federated Metal Div.*, 364 Mich. 370. An arbitrator had granted vacation pay in *Tobe Deutschmann Corp.*, 35 L. A. 179 (1960).

The reorganization court had "exclusive jurisdiction of the debtor and its property, wherever located." 11 U. S. C. § 511. When the petition for reorganization was approved, the court had all the powers of a bankruptcy court upon adjudication and of a court of equity. 11 U. S. C. §§ 514, 516. These included the right to provide for the manner of the proof and allowance of claims and to determine the validity and amount thereof. 11 U. S. C. § 596; *Lesser v. Gray*, 236 U. S. 70. The bankruptcy court does not ordinarily surrender its jurisdiction except under exceptional circumstances. *Mangus v. Miller*, 317 U. S. 178, 186. Whether the bankruptcy court should surrender its jurisdiction to another tribunal involved the exercise of judicial discretion. *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478, 483.

The Union argued that clear federal policy favored arbitration of labor disputes and this constituted such an exceptional circumstance as required the bankruptcy court to surrender its jurisdiction to arbitration. It relied principally on *Steel Workers v. American Manufacturing Co.*, 363 U. S. 564; *Steel Workers v. Enterprise Wheel & Car*

Corp., 363 U. S. 593; *Steel Workers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574. The Union pointed out circumstances where bankruptcy or reorganization courts have approved the surrender of jurisdiction: *Foust, Admr. v. Munson SS Lines*, 299 U. S. 77 (Action for wrongful death under Merchant Marine Act of 1920); *In re Spier Aircraft Corp.*, 137 F. 2d 736 (C. A. 3) (eminent domain); *Nathanson v. N. L. R. B.*, 344 U. S. 25 (Back pay award of National Labor Relations Board).

In the case at bar, as the District Court found, labor peace was not an issue. The employer was out of business and had no plant or employees. The collective bargaining agreement had expired on April 14, 1961. Whatever rights the employees had for vacation pay under the collective bargaining agreement had already become fixed. All that remained was a question of law which, it seems to us, could better be passed on by the court rather than an arbitrator. This case does not involve working conditions or practices in a shop, but the law of the land.

The cases where the bankrupcty court surrendered jurisdiction do not support the Union's position. In those cases, jurisdiction was surrendered either to another court of competent jurisdiction or to an administrative agency which was empowered by law to hear and determine the particular controversy. In *Foust, Admr. v. Munson SS Lines*, supra, there was involved a right to a jury trial in a wrongful death case. *In re Spier Aircraft Corp.*, supra, it was held that a proceeding in eminent domain should be determined by the court in which it was filed. In *Nathanson v. N. L. R. B.*, supra, the order of the Board finding the company guilty of an unfair labor practice was made before bankruptcy. The Board was the only agency authorized by Congress to make a back pay award which was the basis of the claim against the bankrupt's estate.

In the present case the rights of the employees to make proof of their claims in the bankruptcy court has been preserved by an order of the court.

We find no abuse of discretion on the part of the District Court in refusing to surrender jurisdiction in favor of arbitration. The *res* was in *custodia legis*. There was no occasion here for the court to abdicate its judicial functions.

The judgments are affirmed.

JUDGMENT*

No. 14,982.

(Filed February 27, 1963)

Appeal from the United States District Court for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be and the same is hereby affirmed.

Approved for entry:

/s/ Paul C. Weick,
United States District Judge.

*Identical judgment entered in case No. 14,983.

OPINION OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF MICHIGAN

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In the Matter of: MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware Corporation, *Debtor.*	Chapter X Reorganization Bankruptcy No. 47795
INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, Voluntary Unincorporated Associations, *Plaintiffs,* v. WOODLIN METAL PRODUCTS COMPANY, A DIVISION OF MUSKEGON MOTOR SPECIALTIES COMPANY, A Delaware Corporation, and LOUIS F. DAVIS, Trustee in Bankruptcy, *Defendants.*	Civil No. 20953

Muskegon Motor Specialties Company, hereinafter referred to as the "Company", filed a petition under Chapter XI of the Bankruptcy Act on April 12, 1961 and, on later petition of the debtor, a Chapter X reorganization proceeding was authorized on May 11, 1961.

Prior to the reorganization proceedings the United Automobile, Aircraft and Agricultural Implement Workers of America, Local 1272, hereinafter referred to as the "Union", commenced an action on February 27, 1961 in this court under Section 301(a) of the Labor Management Relations Act, 1947 (29 USCA 185(a)), Civil Action No. 20953. The Union seeks in that action to enforce the provisions of a collective bargaining agreement with Woodlin Metal Products Company, a division of the "Company" and here-

inafter referred to as the "Division", at its former Marshall (Michigan) plant, which provided that any differences "as to the meaning and application" of the agreement be submitted to arbitration and that the decision of the arbitrator shall be "final and binding upon the parties". The Union has in that case moved for summary judgment on its complaint.

The Trustee in the bankruptcy proceedings now moves to reject the arbitration portion of the collective bargaining agreement under the provisions of Section 116 of the Bankruptcy Act (11 USCA 516).

The Union's request for arbitration arises from a controversy with the Company concerning the payment of vacation pay under the collective bargaining agreement. The employees of the Division and members of the Union were discharged when the Division terminated operations on February 12, 1960. Vacation pay under the agreement was due to employees on the seniority list on May 31st of each year and having worked a requisite number of hours. The Union asserts that the employees had accrued a right to vacation pay while the Company claims that no employees were on a seniority list on May 31, 1960 since the Division had ceased operation and, therefore, there was no right to vacation pay.

Prior to this bankruptcy proceeding the Company and the Union had agreed to arbitrate and had selected an arbitrator. However, the Trustee rescinded this agreement after the bankruptcy action began.

The general federal policy is in favor of the settlement of labor disputes through arbitration, *United Steelworkers of America v. American Manufacturing Co.*, 363 U. S. 564 (1960). In support of this policy, the Supreme Court said, in *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U. S. 574 (1960), at page 582:

> "The parties expect that his (the arbitrator's) judgment of a particular grievance will reflect not only what the contract says but, insofar as the collective

bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequences to the morale of the shop, his judgment whether tensions will be heightened or diminished. For the parties' objective in using the arbitration process is primarily to further their common goal of uninterrupted production under the agreement, to make the agreement serve their specialized needs."

Thus the arbitrator's role as keeper of the peace between labor and management is sanctified and inviolate. The Company asserts, however, that since the operation of the division has ceased and the claim of the Union is clearly without legal merit, citing *Treloar v. Steggeman*, 333 Mich. 166 (1952) and *Gichale v. Federated Metal Division*, 48 LRRM 3046 (Mich. 1961), the use of arbitration would be frivolous. However, even assuming Michigan law to be binding upon us in this matter, arbitration might still be ordered since "the federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593, at 596 (1960).

The trustee of the company in bankruptcy seeks to avert this situation by rejecting the executory portions of the collective bargaining agreement. Although the *entire* contract must be rejected, *Johnson et al. v. Kurz et al.*, 95 F. 2d 624, (CA 8, 1938), the only provision of consequence is the arbitration clause.

Section 116 of the Bankruptcy Act (11 USCA 316) reads:

> "Upon the approval of a petition, the judge may * * * (1) permit the rejection of executory contracts, except contracts in the public authority, upon notice to the parties to such contract * * *."

Clearly, if the arbitration portion of the collective bargaining agreement is "executory", it will be void upon the rejection of the agreement which is a matter within the discretion of the judge.

The arbitration provision in the agreement between the Union and the Division provides:

> "In the event that the Division and the Union are unable to reach a satisfactory settlement as to the disposition of any grievance subject to arbitration, either party may submit the grievance to arbitration under the rules then obtaining of the American Arbitration Association. An arbitration may be initiated by either party by notifying the other in writing of its desire to do so, and within fifteen (15) days after such notification, both parties will do everything necessary and proper to set up the arbitration machinery and proceed to arbitration. Any arbitrator so selected shall be requested to render his decision within seven (7) days after his hearing of the dispute."

The arbitration clause is not automatic in operation. One side must ask for arbitration. Both parties may agree on an arbitrator. Both parties are to assist in the machinery of arbitration. Since something remains to be done by both parties, the arbitration clause is executory. *Farrington v. Tennessee*, 95 U. S. 679 (1878).

The circumstances warranting the rejection of contracts in the discretion of the judge are not spelled out in the Bankruptcy Act. Clearly, if the contract is detrimental or unduly onerous, the court should reject the contract. *In Re Chicago Rapid Transit Co.*, 129 F. 2d 1 (C.A. 7, 1942). However, this is not to say that *only* burdensome contracts may be rejected. *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523 (1943).

In this case, perhaps it would not be particularly burdensome to submit the issue to arbitration. However, in a Chapter X proceeding involving the rehabilitation of a corporate debtor, the courts are given wide powers to accomplish this rehabilitation. The court is given exclusive jurisdiction of the debtor's property. Section 111 (11 USCA 511). The court may restrain creditor's suits. Section 116

(11 USCA 513). The court may not be at liberty to surrender its exclusive jurisdiction to another tribunal. *Mangus et al. v. Miller*, 317 U.S. 178 (1942).

Likewise in this case the court should be the sole arbiter of the claims against the debtor. Just as the labor arbitrator's position is protected to maintain labor peace, so should the court in bankruptcy be allowed to pass on creditors' claims when attempting to rehabilitate the corporate debtor, especially in a case where labor peace is not in issue.

Arbitration is not, of course, always contrary to the policy of the bankruptcy court.

A Trustee may, with permission of the court, submit any controversy to arbitration, Section 26(a) of the Bankruptcy Act (11 USCA 49(a)). However, in this case, since the Trustee does not desire to submit this issue to arbitration and there exists a ready forum in which claims may be submitted, the court will assert absolute jurisdiction over the issue. This action will then permit the court to assert greater control in its attempt to rehabilitate the Company.

An appropriate order rejecting the executory portions of the collective bargaining agreement may be submitted. The Trustee may also submit an order dismissing the Union's motion for mandatory order directing arbitration in Civil Action No. 20953.

Fred W. Kaess,
United States District Judge.

Filed February 8, 1962.

APPENDIX B

STATUTES INVOLVED

Section 301(a) of the Labor Management Relations Act, 61 Stat. 156 (1947), 29 U.S.C. Sec. 185(a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Section 203(d) of the Labor Management Relations Act, 61 Stat. 154 (1947), 29 U.S.C. Sec. 173(d) provides:

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases."

Section 111 of the Bankruptcy Act, 52 Stat. 884 (1938), 11 U.S.C. Sec. 511 provides:

> "Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

Section 116 of the Bankruptcy Act, 52 Stat. 885 (1938), 11 U.S.C. Sec. 516 provides:

"Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties in this chapter conferred and imposed upon him and the court—

(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable;

(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as a judge may approve; and

(4) in addition to the relief provided by section 29 of this title, enjoin or stay until final decree of the commencement or continuation of a suit against the debtor or its trustee or any act or proceedings to enforce a lien upon the property of the debtor."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 164

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, voluntary unincorporated associations,
Petitioners,
vs.
LOUIS F. DAVIS, TRUSTEE OF MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation;
WOODLIN METAL PRODUCTS COMPANY, a division of MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation; and the
SECURITIES AND EXCHANGE COMMISSION,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1136

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, voluntary unincorporated associations,
Petitioners,
vs.
LOUIS F. DAVIS, TRUSTEE OF MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation; WOODLIN METAL PRODUCTS COMPANY, a division of MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware corporation; and the SECURITIES AND EXCHANGE COMMISSION,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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19.

Considerations Governing Review on Certiorari

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons there-

for. The following while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. * * *"

COUNTER-STATEMENT OF QUESTIONS INVOLVED

May the District Court authorize a trustee under Chapter X of the Bankuptcy Act to reject an executory labor contract containing an arbitration clause and retain jurisdiction to hear claims against the bankrupt corporation?

COUNTER-STATEMENT OF FACTS

The Woodlin Metal Products, a division of Muskegon Motor Specialties Company, hereinafter called the "Company", ceased operation in February of 1960. The Company had earlier entered into a labor contract with the International Union, United Automobile, Aircraft and Agricultural Workers of America AFL-CIO, and its Local 1272 hereinafter called the "Union".

A dispute arose after the closing of the plant concerning the vacation pay of the employees and the Union sought arbitration. The matter dragged and a Complaint was filed on February 27, 1961, under Sec. 301 (a) of the Labor Management Relations Act (1947)[1] and the United States Arbitration Act.[2]

On April 12, 1961 the Company filed a petition under Chapter XI of the Bankruptcy Act[3] which petition was later transferred to Chapter X of the Bankruptcy Act[4].

Louis F. Davis, hereinafter referred to as the "Trustee", was appointed Trustee for the Company, and was made a party to the action.

The United States Securities and Exchange Commission intervened in the matter in behalf of the position taken by the Company.

Upon an application by the Union for a mandatory order directing arbitration as prayed for in the Complaint, the

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[1] 61 Stat. 156 (1947), 29 U.S.C. Sec. 185 (a).

[2] 61 Stat. 669 (1947), U.S.C. Sec. 1 *et seq.*

[3] 52 Stat. 883 (1938), 11 U.S.C. Sec. 701 *et seq.*

[4] 52 Stat. 883 (1938), 11 U.S.C. Sec. 501 *et seq.*

Trustee filed a petition to reject the executory portions of the labor contract pursuant to Section 116 (1) of the Bankruptcy Act.[3] An answer was filed to this petition by the Union and the Securities and Exchange Commission argued and filed briefs in behalf of the position of the Company.

Both matters were heard simultaneously and one opinion rendered for both cases. On February 8, 1963 in the reorganization proceedings an order was entered authorizing and directing the Trustee to "reject the executory portions of the labor contract." On the same day, an order was entered in the suit to compel arbitration denying the Union's motion for a Mandatory Order and dismissing the Complaint.

The reorganization Court preserved the right of the employees to prove their claims in the bankruptcy proceedings.

The Court of Appeals affirmed both orders of the District Court and this petition for certiorari then filed.[4]

ARGUMENT

This petition for the granting of a Writ of Certiorari is based upon two grounds: I, a conflict between two federal laws and II, the erroneous decision of the Court of Appeals.

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[3] 52 Stat. 885 (1938), 11 U.S.C. Sec. 516 *et seq.*

[4] See Appendix I.

I.

There is no conflict between Section 301 (a) of the Labor Management Relations Act (Appendix II, providing for arbitration in labor contracts), and Section 116 of the Bankruptcy Act (Appendix II, providing for rejection of executory contracts).

The sections of the Bankruptcy Act are clear and unambiguous. Section 116 provides among other things:

> "* * * the Judge may in addition to the jurisdiction, and duties in this chapter conferred and imposed upon him and the court * * *
>
> (1) permit the rejection of executory contracts of the debtor * * *."

There is no limitation on the type of contract, as petitioner would have us accept. We have not found one case where the power to reject an executory contract has been limited. In point of fact, this authority in the reorganization Court to reject executory contracts has always been upheld, [including labor contracts] which type of contract petitioner here seems to feel should be excluded from this broad language of the Bankruptcy Act. There are few cases on this subject and this is so because the power to reject executory contracts is so clearly spelled out in the Bankruptcy Act that it has seldom, if ever, been attacked. There have been no cases to the contrary cited by the petitioner for the Writ of Certiorari and this writer has also been unable to find any. The few labor cases on the subject are consistent.

In *In the Matter of Klaber Bros., Inc.*, U. S. District Court S. D. N. Y. 173 Fed. Supp. 83, 1959, 44 LRRM 2176 at p. 2177:

"This case involves no conflict between 672 of Title 11 USCA and the National Labor Relations Act (Title 29 USCA §141 *et seq.*).

It is clear that there is no intent to limit the application of the authority and power granted to the court in Title 11 USCA §713 to reject executory contracts. The pertinent part of this section is as follows:

'Upon the filing of a petition, the Court may, in addition to the jurisdiction powers, and duties conferred are imposed upon it by this chapter' • • •

'(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate • • •"

As the Referee stated in passing upon this issue: 'The Bankruptcy Act makes no distinction among classes of executory contracts. The power to permit rejection of an executory contract would be exercised where rejection is to the advantage of the estate. Where the contract is detrimental, its rejection should be permitted.' *I likewise conclude that there should be no differentiation in the treatment of executory employment or collective bargaining contracts as to termination under the circumstances of this case.*" (Emphasis supplied.)

In dicta in the case of *In re Pocketbook Workers' Union*, NY Sup. Court, 1956, 25 L.A. 807 at p. 810, where the Court said:

"Prior to the commencement of the hearings but subsequent to the demand for arbitration, respondent filed a petition under Chapter XI of the Bankruptcy Act. From this respondent claims two consequences: First, that the District Court in bankruptcy had complete and exclusive jurisdiction of

its officers and second, that the contract with the union became inoperative. *It is true that the District Court can relieve the debtor of an executory contract* but it has taken no steps in regard to this one and there is no indication that it intends to. *Until the contrary is effected the contract remains in force and can be enforced.* The same is true as to exclusive jurisdiction during the period of bankruptcy. The arbitration could have been stayed but the referees refused an application for that relief. The refusal was based on the ground that the debtor's assets could not be reached by virtue of the bankruptcy and that the proceedings could therefore not affect it. But this does not affect the right to proceed." (Emphasis supplied.)

And in like vein—

Employees v. Des Moines R. R., 14 Fed. (2d) 836, (8th Cir. 1926);

In re Seattle R.R., 61 Fed. 541 (CA 9th Cir.);

In re Compania de los Ferrocarriles de Porto Rico (1952) 110 Fed. Supp. 45 (U. S. Dist. Ct. of Porto Rico);

In re Public Ledger Inc., 63 Fed. Supp. 1008 (3rd Cir. 1945).

In view of the fact there are no conflicting decisions between the various U. S. Circuit or District Courts and all cases have been consistent in their application of the sections of the two acts involved, we submit that the petition for the Writ of Certiorari should be denied on this ground.

II.

The decision of the Court of Appeals was not erroneous.

The decision was completely in harmony with all accepted procedures in bankruptcy cases. In point of fact to hold

otherwise would be inconsistent with all of the cases cited above, and a complete departure from the orderly process already established.

There can be no argument that, if bankruptcy had not intervened, and there was a dispute between the parties, arbitration would have been ordered. *But* bankruptcy did intervene, and the reorganization Court *did* order the executory portion of the labor contract rejected because such rejection would benefit the estate; and the bankruptcy Court *did* in his discretion retain jurisdiction. We submit that in all of the cases cited by the petitioner, where arbitration was in issue, bankruptcy had not intervened.

The above having actually taken place, the argument of the Union is now reduced to the simple proposition: that it does not like the decision of the Reorganization Court and that the decision to retain jurisdiction was not a judicial approach [in the opinion of the Union].

But isn't this a clear cut harmonization of both statutes involved? That the Bankruptcy Act means what it says in permitting a rejection of executory contracts, including labor contracts?

The Bankruptcy Act does permit the Court a discretion in waiving jurisdiction to try claims in some cases where in its discretion the bankrupt estate will be benefited. This is also clearly set out in the Act.[1] In cases where jurisdiction has been surrendered by reorganization courts there were exceptional circumstances none of which appears here. The case cited by the petitioner *Nathanson v. NLRB*, 344 U.S. 25 (1952) (R. 9) is admittedly one where the finding of an unfair labor practice was made prior to bankruptcy by

[1] Sec. 26(a), 11 U.S.C.A. 49(a) (1938).

the N.L.R.B. and the Court relinquished jurisdiction because it felt that was in the province of the Board to determine the amount of the back pay due. In the case at bar the claims can be heard by the reorganization Court, creditors can be represented, and an orderly proceeding held to determine the issues. In the present case the rights of the employees to make proof of their claims in the bankruptcy court has been preserved. If any other method were followed then there would have been a conflict between the two sections of the Act in question.

SUMMARY

There is no conflict in the interpreting of the statutes as claimed by the petitioner here, nor is there any conflict between any of the decisions of the District Courts or Courts of Appeals on the points raised. The decision of the Circuit Court of Appeals was clearly not erroneous and was consistent with every case cited by both sides. There are no grounds for the granting of a writ of certiorari and these respondents pray that the petitioner be denied issuance of a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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APPENDIX I

OPINION OF THE COURT OF APPEALS

Nos. 14,982-3

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

In the Matter of:

MUSKEGON MOTOR SPECIALTIES COMPANY,

Debtor,

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, Voluntary Unincorporated Associations,

Respondents-Appellants,

v.

LOUIS F. DAVIS, TRUSTEE OF MUSKEGON MOTOR SPECIALTIES COMPANY, A Delaware Corporation,

Petitioner-Appellee;

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, Voluntary Unincorporated Associations,

Plaintiffs-Appellants,

v.

WOODLIN METAL PRODUCTS COMPANY, A DIVISION OF MUSKEGON MOTOR SPECIALTIES COMPANY, A Delaware Corporation, and

LOUIS F. DAVIS, Trustee in Bankruptcy,

Defendants-Appellees.

APPEAL from the District Court of the United States for the Eastern District of Michigan, Southern Division.

Decided February 27, 1963.

Before. CECIL, Chief Judge, WEICK and O'SULLIVAN, Circuit Judges.

WEICK, Circuit Judge. This is one of an increasing number of cases coming before the courts involving the application and legal effect of an arbitration clause in a collective bargaining agreement. In the present case, the Union claims that the District Court should have surrendered, in favor of arbitration, its exclusive jurisdiction to determine claims of employees for vacation pay against the estate of a defunct debtor in reorganization proceedings.

The collective bargaining agreement entered into between the Union and a division of the debtor contained a provision for vacation pay for employees having one year or more seniority and on the seniority list *as of May 31st*.

On February 12, 1960 the division went out of business and discharged all its employees. Thereafter it disposed of its plant and equipment.

The Union claimed vacation pay for the employees covering the employment period of June 1, 1959 to May 31, 1960. It asserted that even though the division had closed its plant and had no employees as of May 31, 1960, the employer should nevertheless pay for the vacations to which they would have been entitled if it had remained in business. Upon refusal of the employer to accede to this claim, the Union made a demand for arbitration of the grievance. On February 27, 1961 the Union filed suit in the District Court to compel arbitration.

On April 12, 1961 the debtor filed in the District Court a petition under Chapter XI of the Bankruptcy Act, 11 U. S. C. §701 et seq., which petition was subsequently amended to comply with Chapter X, 11 U. S. C. §501. The District Court entered an order approving the petition and enjoining and staying all suits against the debtor which would interfere with the exclusive jurisdiction of the court. A trustee for the debtor was appointed by the court and he was added as a party defendant in the suit to compel arbitration. The trustee also filed a petition for an order rejecting the executory provisions of the collective bargaining agreement.

The District Court disposed of both matters in an opinion in which he refused to surrender jurisdiction to arbitration.

In this Court the Securities and Exchange Commission has filed a brief supporting the position of the appellees.

It appears that the arbitration demand was probably motivated by the Union's belief that it would fare better with this procedure than in the bankruptcy court.

The Supreme Court of the State of Michigan, where the agreement was made and to be performed, held in similar cases that the employee had no claim for vacation pay against an employer who had gone out of business prior to the date when the employees' rights thereto had become fixed. *Treloar v. Steggeman*, 333 Mich. 166; *Givhan v. Federated Metal Div.*, 364 Mich. 370. An arbitrator had granted vacation pay in *Tobe Deutschmann Corp.*, 35 L. A. 179 (1960).

The reorganization court had "exclusive jurisdiction of the debtor and its property, wherever located." 11 U. S. C. § 511. When the petition for reorganization was approved, the court had all the powers of a bankruptcy court upon adjudication and of a court of equity. 11 U. S. C. §§ 514, 516. These included the right to provide for the manner of the proof and allowance of claims and to determine the validity and amount thereof. 11 U. S. C. § 596; *Lesser v. Gray*, 236 U. S. 70. The bankruptcy court does not ordinarily surrender its jurisdiction except under exceptional circumstances. *Mangus v. Miller*, 317 U. S. 178, 186. Whether the bankruptcy court should surrender its jurisdiction to another tribunal involved the exercise of judicial discretion. *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478, 483.

The Union argued that clear federal policy favored arbitration of labor disputes and this constituted such an exceptional circumstance as required the bankruptcy court to surrender its jurisdiction to arbitration. It relied principally on *Steel Workers v. American Manufacturing Co.*,

363 U. S. 564; *Steel Workers v. Enterprise Wheel & Car Corp.*, 363 U. S. 593; *Steel Workers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574. The Union pointed out circumstances where bankruptcy or reorganization courts have approved the surrender of jurisdiction: *Foust, Admr. v. Munson SS. Lines*, 299 U. S. 77 (Action for wrongful death under Merchant Marine Act of 1920); *In re Spier Aircraft Corp.*, 137 F. 2d 736 (C. A. 3) (eminent domain); *Nathanson v. N. L. R. B.*, 344 U. S. 25 (Back pay award of National Labor Relations Board).

In the case at bar, as the District Court found, labor peace was not an issue. The employer was out of business and had no plant or employees. The collective bargaining agreement had expired on April 14, 1961. Whatever rights the employees had for vacation pay under the collective bargaining agreement had already became fixed. All that remained was a question of law which, it seems to us, could better be passed on by the court rather than an arbitrator. This case does not involve working conditions or practices in a shop, but the law of the land.

The cases where the bankruptcy court surrendered jurisdiction do not support the Union's position. In those cases, jurisdiction was surrendered either to another court of competent jurisdiction or to an administrative agency which was empowered by law to hear and determine the particular controversy. In *Foust, Admr. v. Munson SS Lines*, supra, there was involved a right to a jury trial in a wrongful death case. *In re Spier Aircraft Corp.*, supra, it was held that a proceeding in eminent domain should be determined by the court in which it was filed. In *Nathanson v. N. L. R. B.*, supra, the order of the Board finding the company guilty of an unfair labor practice was made before bankruptcy. The Board was the only agency authorized by Congress to make a back pay award which was the basis of the claim against the bankrupt's estate.

In the present case the rights of the employees to make proof of their claims in the bankruptcy court has been preserved by an order of the court.

We find no abuse of discretion on the part of the District Court in refusing to surrender jurisdiction in favor of arbitration. The *res* was in *custodia legis*. There was no occasion here for the court to abdicate its judicial functions.

The judgments are affirmed.

JUDGMENT*

No. 14,982

(Filed February 27, 1963)

Appeal from the United States District Court for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be and the same is hereby affirmed.

Approved for entry:

/s/ Paul C. Weick,
United States District Judge.

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*Identical judgment entered in case No. 14,983.

OPINION OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF MICHIGAN

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In the Matter of: MUSKEGON MOTOR SPECIALTIES COMPANY, a Delaware Corporation, *Debtor.*	Chapter X Reorganization Bankruptcy No. 47795
INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, and ITS LOCAL 1272, Voluntary Unincorporated Associations, *Plaintiffs,* *v.* WOODLIN METAL PRODUCTS COMPANY, A DIVISION OF MUSKEGON MOTOR SPECIALTIES COMPANY, A Delaware Corporation, and LOUIS F. DAVIS, Trustee in Bankruptcy, *Defendants.*	Civil No. 20953

Muskegon Motor Specialties Company, hereinafter referred to as the "Company", filed a petition under Chapter XI of the Bankruptcy Act on April 12, 1961 and, on later petition of the debtor, a Chapter X reorganization proceeding was authorized on May 11, 1961.

Prior to the reorganization proceedings, the United Automobile, Aircraft and Agricultural Implement Workers of America, Local 1272, hereinafter referred to as the "Union", commenced an action on February 27, 1961 in this court under Section 301(a) of the Labor Management Relations Act, 1947 (29 USCA 185(a)), Civil Action No. 20953.

The Union seeks in that action to enforce the provisions of a collective bargaining agreement with Woodlin Metal Products Company, a division of the "Company" and hereinafter referred to as the "Division", at its former Marshall (Michigan) plant, which provided that any differences "as to the meaning and application" of the agreement be submitted to arbitration and that the decision of the arbitrator shall be "final and binding upon the parties". The Union has in that case moved for summary judgment on its complaint.

The Trustee in the bankruptcy proceedings now moves to reject the arbitration portion of the collective bargaining agreement under the provisions of Section 116 of the Bankruptcy Act (11 USCA 516).

The Union's request for arbitration arises from a controversy with the Company concerning the payment of vacation pay under the collective bargaining agreement. The employees of the Division and members of the Union were discharged when the Division terminated operations on February 12, 1960. Vacation pay under the agreement was due to employees on the seniority list on May 31st of each year and having worked a requisite number of hours. The Union asserts that the employees had accrued a right to vacation pay while the Company claims that no employees were on a seniority list on May 31, 1960 since the Division had ceased operation and, therefore, there was no right to vacation pay.

Prior to this bankruptcy proceeding the Company and the Union had agreed to arbitrate and had selected an arbitrator. However, the Trustee rescinded this agreement after the bankruptcy action began.

The general federal policy is in favor of the settlement of labor disputes through arbitration. *United Steelworkers of America v. American Manufacturing Co.*, 363 U. S. 564 (1960). In support of this policy, the Supreme Court said, in *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U. S. 574 (1960), at page 582:

> "The parties expect that his (the arbitrator's) judgment of a particular grievance will reflect not only what the contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequences to the morale of the shop, his judgment whether tensions will be heightened or diminished. For the parties' objective in using the arbitration process is primarily to further their common goal of uninterrupted production under the agreement to make the agreement serve their specialized needs."

Thus the arbitrator's role as keeper of the peace between labor and management is sanctified and inviolate. The Company asserts, however, that since the operation of the division has ceased and the plant of the Union is clearly without legal merit, citing *Treloar v. Stoppenato*, 335 Mich. 166 (1952) and *Gichan v. Federated Metal Division*, 48 LRRM 3046 (Mich. 1961), the use of arbitration would be frivolous. However, even assuming Michigan law to be binding upon us in this matter, arbitration might still be ordered since "the federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593, at 596 (1960).

The position of the company in bankruptcy seeks to avert this situation by rejecting the executory portions of the collective bargaining agreement. Although the *entire* contract must be rejected, *Johnson et al. v. Kanter et al.*, 305 F. 2d 629, (CA 8, 1962), the only provision of consequence is the arbitration clause.

Section 116 of the Bankruptcy Act (11 USCA 516) reads:

> "Upon the approval of a petition, the judge may * * * (1) permit the rejection of executory contracts, except contracts in the public authority, upon notice to the parties to such contract * * *"

Clearly, if the arbitration portion of the collective bargaining agreement is "executory", it will be void upon the rejection of the agreement which is a matter within the discretion of the judge.

The arbitration provision in the agreement between the Union and the Division provides:

> "In the event that the Division and the Union are unable to reach a satisfactory settlement as to the disposition of any grievance subject to arbitration, either party may submit the grievance to arbitration under the rules then obtaining of the American Arbitration Association. An arbitration may be initiated by either party by notifying the other in writing of its desire to do so, and within fifteen (15) days after such notification, both parties will do everything necessary and proper to set up the arbitration machinery and proceed to arbitration. Any arbitrator so selected shall be requested to render his decision within seven (7) days after his hearing of the dispute."

The arbitration clause is not automatic in operation. One side must ask for arbitration. Both parties may agree on an arbitrator. Both parties are to assist in the machinery of arbitration. Since something remains to be done by both parties, the arbitration clause is executory. *Formation v. Tennessee*, 95 U. S. 679 (1878).

The circumstances warranting the rejection of contracts in the discretion of the judge are not spelled out in the Bankruptcy Act. Clearly, if the contract is detrimental or unduly onerous, the court should reject the contract. *In Re Chicago Rapid Transit Co.*, 129 F. 2d 1 (C. A. 7, 1942). However, this is not to say that *only* burdensome contracts may be rejected. *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U. S. 523 (1943).

In this case, perhaps it would not be particularly burdensome to submit the issue to arbitration. However, in a Chapter X proceeding involving the rehabilitation of a

corporate debtor, the courts are given wide powers to accomplish this rehabilitation. The court is given exclusive jurisdiction of the debtor's property, Section 111 (11 USCA 511). The court may restrain creditor's suits, Section 116 (11 USCA 516). The court may not be at liberty to surrender its exclusive jurisdiction to another tribunal. *Maugus et al. v. Miller*, 317 U.S. 178 (1942).

Likewise in this case the court should be the sole arbiter of the claims against the debtor. Just as the labor arbitrator's position is protected to maintain labor peace, so should the court in bankruptcy be allowed to pass on creditors' claims when attempting to rehabilitate the corporate debtor, especially in a case where labor peace is not in issue.

Arbitration is not, of course, always contrary to the policy of the bankruptcy court.

A Trustee may, with permission of the court, submit any controversy to arbitration, Section 26(a) of the Bankruptcy Act (11 USCA 49(a)). However, in this case, since the Trustee does not desire to submit this issue to arbitration and there exists a ready forum in which claims may be submitted, the court will assert absolute jurisdiction over the issue. This action will then permit the court to assert greater control in its attempt to rehabilitate the Company.

An appropriate order rejecting the executory portions of the collective bargaining agreement may be submitted. The Trustee may also submit an order dismissing the Union's motion for mandatory order directing arbitration in Civil Action No. 20953.

Fred W. Kaess,
United States District Judge.

Filed February 8, 1962.

APPENDIX II

STATUTES INVOLVED

Section 111 of the Bankruptcy Act, 52 Stat. 884 (1938), 11 U.S.C. Sec. 511 provides:

> "Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

Section 116 of the Bankruptcy Act, 52 Stat. 885 (1938), 11 U.S.C. Sec. 516 provides:

> "Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties in this chapter conferred and imposed upon him and the court—
>
> (1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;
>
> (2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable;
>
> (3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as a judge may approve; and

(4) in addition to the relief provided by section 29 of this title, enjoin or stay until final decree of the commencement or continuation of a suit against the debtor or its trustee or any act or proceedings to enforce a lien upon the property of the debtor."

Section 301(a) of the Labor Management Relations Act, 61 Stat. 156 (1947), 29 U.S.C. Sec. 185(a) provides:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Section 203(d) of the Labor Management Relations Act, 61 Stat. 154 (1947), 29 U.S.C. Sec. 173(d) provides:

"Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases."